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Agency Name Public Service Commission of South Carolina	1. Chapter Number 103	2. Date of Filing March 26, 2007
3. Regulation Number 103-690	4. Subject of Regulation Eligible Telecommunications Carrier	

## 5. Statutory Authority

S.C. Code Ann. Section 58-3-140 (Supp. 2006)

## 6. Type of Filing

\_\_\_\_ NOTICE OF GENERAL PUBLIC INTEREST

\_\_\_\_ NOTICE OF DRAFTING

\_\_\_\_ ☒ PROPOSED REGULATION

\_\_\_\_ EMERGENCY REGULATION

\_\_\_\_ FINAL REGULATION FOR GENERAL ASSEMBLY REVIEW

\_\_\_\_ RESUBMISSION OF WITHDRAWN REGULATION FOR GENERAL ASSEMBLY REVIEW

\_\_\_\_ FINAL REGULATION EXEMPT FROM GENERAL ASSEMBLY REVIEW

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**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**  
**CHAPTER 103**  
Statutory Authority: S.C. Code Section 58-3-140 (Supp. 2006)

26 S.C. Code Ann. Regs. 103-690, Designation of Eligible Telecommunications Carriers

**Preamble:**

In Order No. 2006-71, the Commission granted the Office of Regulatory Staff's (ORS) Motion to initiate a rule-making proceeding to determine whether multiple ETCs should be authorized and to develop a single set of eligibility standards for Eligible Telecommunications Carrier (ETC) designation. The Commission held that a rule-making proceeding should be scheduled to examine the requirements and standards to be used by the Commission when evaluating applications for ETC status.

**Section-by-Section Discussion**

103-690.A This section addresses the purpose of 103-690 – Designation of Eligible Telecommunications Carriers.

103-690.B This section defines the following terms: cell site, commission, eligible telecommunications carrier, Lifeline Service, Link Up Service, ORS, and wire center.

103-690.C This section addresses the substance of applications that are filed with the Commission seeking designation as an eligible telecommunications carrier and addresses the public interest standard.

**Notice of Public Hearing and Opportunity for Public Comment:**

Interested persons may submit written comments to the Public Service Commission, Docketing Department, 101 Executive Center Drive, Columbia, South Carolina 29210. Please reference Docket Number 2006-37-C. To be considered, comments must be received no later than 4:45 p.m. on June 1, 2007. Interested members of the public and the regulated community are invited to make oral or written comments on the proposed regulation at a public hearing to be conducted by the Public Service Commission on **June 26, 2007, at 10:30 a.m.** in the Commission's Hearing Room, 101 Executive Center Drive, Columbia, South Carolina 29210.

**Preliminary Fiscal Impact Statement:**

There will be no increased costs to the State or its political subdivisions.

**Statement of Need and Reasonableness:**

This statement of need and reasonableness was determined pursuant to S.C. Code Ann. Section 1-23-115(C)(1) through (3) and (9) through (11).

**DESCRIPTION OF REGULATION: 26 S.C. Code Ann. Regs. 103-690**

**Purpose:** In the Public Service Commission's Order No. 2006-71, the Commission decided that it should ensure that eligible telecommunication carrier designations are consistent with the public interest and preserve the dual goals of preserving universal service and fostering

competition. In order to accomplish these goals, the Commission decided that a rule making proceeding should be scheduled to examine the requirements and standards to be used by the Commission when evaluating applications for ETC status.

Legal Authority: S.C. Code Ann. Section 58-3-140 (Supp. 2006)

Plan for Implementation: The proposed regulation will take effect upon approval by the General Assembly and publication in the *State Register*.

**DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:**

By creating a regulation that governs the designation of eligible telecommunications carriers, the Commission will be able to evaluate submitted applications using the same standards. Further, the Commission will be able to evaluate the public interest consistent with an established regulation.

**DETERMINATION OF COSTS AND BENEFITS:**

Although costs related to creating Regulation 103-690 are minimal, the benefits include the promulgation of a regulation that develops criteria for the designation of eligible telecommunications carriers.

**UNCERTAINTIES OF ESTIMATES:**

None.

**EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:**

None.

**DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:**

The regulation will have no detrimental effect on the environment or public health if the regulation is not implemented.

**STATEMENT OF RATIONALE:**

The purpose of 26 S.C. Code Ann. Regs. 103-690 is to create a regulation which governs the designation of eligible telecommunications carriers utilizing a set standard for review. There was no scientific or technical basis relied upon in the development of this regulation.

**Text:**

**103-690. Designation of Eligible Telecommunications Carriers**

**A. Purpose.**

This regulation defines the requirements for designation as an Eligible Telecommunications Carrier ("ETC") for the purpose of receiving federal universal service support, not state universal service support, pursuant to 47 U.S.C. § 214(e) of the Federal Telecommunications Act of 1996.

**B. Definitions.**

1. Cell Site. A geographic location where antennae and electronic communications equipment are placed to create a cell in a cellular network for the use of mobile phones. A cell

site is composed of a tower or other elevated structure for mounting antennae, and one or more sets of transmitter/receivers, transceivers, digital signal processors, control electronics, and backup electrical power sources and sheltering.

2. Commission. The word Commission in this regulation means the Public Service Commission of South Carolina.

3. Eligible Telecommunications Carrier (ETC). An ETC is a carrier as defined in 47 U.S.C. §214(e).

4. Lifeline Service. Lifeline Service is a service as defined in 47 C.F.R. §54.401.

5. Link Up Service. Link Up Service is a service as defined in 47 C.F.R. §54.411.

6. ORS. The abbreviation ORS in this regulation means the Office of Regulatory Staff.

7. Wire Center. A geographic location of one or more local switching systems; a location where customer loops converge. References to the evaluation of service within a wire center, for purposes of this regulation, shall mean an evaluation of the quality of the services provided in that part of the licensees' service area served by a cell site in the event the applicant is a wireless service provider.

#### **C. Requirements for initial designation as an Eligible Telecommunications Carrier.**

(a) The Commission may upon its own motion or upon request, designate a common carrier that meets the requirements in this section, and the public interest standard set forth in subsection (b) of this section, as an ETC for a designated service area. ETCs shall offer services in compliance with 47 C.F.R. §54.101. Upon request and consistent with the public interest, convenience and necessity, the Commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an ETC for a service area designated by the Commission. Before designating an additional ETC for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest. On or after the effective date of this rule, in order to be designated an eligible telecommunications carrier under 47 U.S.C. § 214(e)(2) of the Federal Telecommunications Act of 1996, any common carrier in its application filed with the Commission and a copy provided to the ORS must provide the following information:

(1)(A) commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will (1) provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and (2) provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by (a) modifying or replacing the requesting customer's equipment; (b) deploying a roof-mounted antenna or other equipment; (c) adjusting the nearest cell tower; (d) adjusting network or customer facilities; (e) reselling services from another carrier's facilities to provide service; or (f) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment; and

(B) submit a two-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis, or on a cell site-by-cell

site basis if the applicant is a wireless carrier throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support throughout the area for which the ETC seeks designation; the projected start date and completion date for each improvement; the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center or on a particular cell site are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

(C) for carriers seeking certification in areas not eligible for High Cost Support from the USF, but seeking ETC designation for the purpose of participation in the Lifeline and Link Up programs, the following shall apply in lieu of paragraph (B) above: shall submit a two-year plan that describes the carrier's plans for advertising and outreach programs for identifying, qualifying and enrolling eligible participants in the Lifeline and Link Up programs. All other provisions of this subsection shall apply.

(2) demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, its ability to reroute traffic around damaged facilities, and its capability of managing traffic spikes resulting from emergency situations. The Commission shall determine on a case-by-case basis whether a carrier has demonstrated its ability to remain functional in emergency situations.

(3) demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(4) demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.

(5) certify that the carrier acknowledges that the Federal Communications Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(6) certify that it does or will offer the services that are supported by the federal universal service support mechanisms by using its own facilities or a combination of its own facilities and resale of another carrier's services.

(7) certify by affidavit signed by an officer of the company that it does or will advertise in a media of general distribution the availability of such services, including lifeline services and the applicable charges.

(b) *Public Interest Standard.* Prior to designating an eligible telecommunications carrier pursuant to 47 U.S.C. § 214(e)(2), the Commission must determine that such designation is in the public interest. In doing so, the Commission shall consider, *inter alia*, the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant's service offering. In instances where an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company, the Commission shall also

conduct a creamskimming analysis that includes, but is not limited to, comparing the population density of each wire center in which the eligible telecommunications carrier applicant seeks designation against that of the wire centers in the study area in which the eligible telecommunications carrier applicant does not seek designation. The Commission will deny designation if it concludes that the potential for creamskimming exists. The Commission shall not designate a service area to an ETC that is smaller than an entire wire center.